

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 1:07-CV-1081

Plaintiff,

Hon. Richard Alan Enslen

v.

ANDREW OUWENGA,

Defendant.

ORDER

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This matter is before the Court on Defendant Andrew Ouwenga's Affidavit Motion to Dismiss. By Order of April 21, 2008, the Court rejected Defendant's first Affidavit Motion to Dismiss because of several defects. (*See* Dkt. No. 12.) Defendant has now fixed said defects and his Motion is properly before the Court. The United States of America has responded in opposition to Defendant's Motion. The Court discerns no reason for oral argument. W.D. Mich. LCivR 7.2(d).

Defendant argues this action should be dismissed for five reasons. To wit, (1) the Government's "reliance upon 26USC [sic] for it's foundation is in error;" (2) "the Legislative Power of Congress is restricted to the 10 square miles of the District of Columbia and Possessions of the U.S., to the exclusion of Michigan;" (3) the Government's jurisdictional allegation is "without substance;" (4) "Congress does not recognize the U.S.D.C. for the Western District of Michigan . . . which leaves this court without Congressional approval for it's [sic] judicial presence;" and (5) the assessment against Defendant for unpaid income tax "is not supported by affidavit signed under the 'Penalty of Perjury' to being the truth." (Mot. 2, 4.)

As the Government correctly notes, "Defendant's motion is mostly incomprehensible and full of incomplete thoughts and nonsensical assertions." (Resp. 1.) Although it is difficult to determine

what Defendant means regarding the Government's reliance on Title 26, it is clear that the Internal Revenue Code has not been invalidated and that Defendant's argument is without merit. Likewise, Defendant's argument that Congress cannot regulate Michigan because it is not within "10 square miles" of the District of Columbia is defeated by the Constitution itself. *See* U.S. Const. Art. I, § 8, cl. 17. Thus, jurisdiction is properly grounded in 28 U.S.C. §§ 1331, 1340, and 1345, as well as 26 U.S.C. § 7402(a). (*See* Compl. ¶ 1.) Defendant's numerous arguments to the contrary, including his assertion that the Western District of Michigan is not "recognized," are frivolous. Finally, Defendant's argument that the assessment is not supported by affidavit has been widely rejected by the courts. *See, e.g., Morelli v. Alexander*, 920 F. Supp. 556, 558 (S.D.N.Y. 1996) ("Section 6065 was enacted to permit the *taxpayer* to submit a verified return rather than a notarized return . . . and does not apply to notices issued by IRS agents.") (citations omitted). Accordingly, Defendant's Motion is without merit.

THEREFORE, IT IS HEREBY ORDERED that Defendant Andrew Ouwenga's Affidavit Motion to Dismiss (Dkt. No. 14) is **DENIED**.

DATED in Kalamazoo, MI:
July 10, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE